United Nations S/2003/1039

Security Council

Distr.: General
27 October 2003

Original: English

Letter dated 24 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 June 2003 (S/2003/651).

The Counter-Terrorism Committee has received the attached supplementary report from the Marshall Islands, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-58657 (E) 101103

Annex

Letter dated 8 September 2003 from the Permanent Representative of the Marshall Islands to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Upon instructions of my Government, I have the honour to submit the second report of the Republic of the Marshall Islands to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Alfred **Capelle**
Ambassador
Permanent Representative

Enclosure

Government of the Marshall Islands' Clarification Report pursuant to paragraph 6 of Security Council resolution 1373 (2000)

Sub-paragraph 1 (a):

- *Do the legal provisions in the Marshall Islands which oblige financial institutions and cash dealers to report suspicious transactions also oblige other intermediaries like (for example lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) as well as other natural and legal persons to report suspicious financial transactions to the relevant authorities.*

Answer: Section 2 (IV) (iv) of the Marshall Islands Banking Act 1987 defines financial institutions as *any person who carries on the business of money transmission services; issuing and administering means of payment (such as credit cards, travelers' checks and bankers' drafts); guarantees and commitments; trading in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities; underwriting share issues and participation in such issues; money-brokering; portfolio management and advice; safekeeping* and *administration of securities; credit reference services; safe custody services.*

Section 67 (1) (a) of the same Act states that *the Commissioner shall receive reports of transactions issued by financial institutions*... Furthermore, Section 67 (i) also states that the Commissioner *shall have the authority to request additional information from financial institutions and cash dealers where the Commissioner has reasonable ground to believe that such information is essential in discovering money laundering activity.*

Additionally, Section 67 (l) states that the Commissioner shall have the authority and ability to apply for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any documents, materials, or other things therein for the purposes of preventing money laundering activity...

Furthermore, Section 68 (1) states that *a financial institution or cash dealer shall maintain accounts in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names.* Furthermore, Section 68 (2) says *that a financial institution or cash dealer shall record and verify the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents providing convincing evidence of their legal existence and the powers if their legal representative, or any other official or private documents when initiating or conducting business relations, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing cash transactions*...

Finally, Section 70 (1) states that *financial institutions and cash dealers shall, within 3 days of the transaction, report to the commissioner all suspicious transactions, including but not limited to those which are ten thousand dollars ($10,000) or more or multiple transactions which, altogether, exceed ten thousand dollars if they are undertaken by or on behalf of any one person during any twenty-four hour period or, complex or unusual transactions, whether completed or not, and all unusual patterns of transactions, and otherwise significant but periodic transactions, which have no apparent economic or lawful purpose.* It is to be noted here that the Commissioner may provide additional information or criteria to be used in identifying suspicious transactions.

Sub-paragraph 1 (b):

- Could the Marshall Islands outline the legislation that will criminalize the financing of terrorism and a progress report of its enactment? It is to be noted here that for an act to constitute an offense, it is not necessary that the funds are used to carry out a terrorist offense (see article 2 paragraph 3 of the Convention for the Suppression of Financing of Terrorism). The acts sought to be criminalized are capable of being committed even if:

    - The only related terrorist act takes place or is intended to take place outside the country;
    - No related terrorist act actually occurs or is attempted;
    - No transfer of funds from one country to another takes place; and
    - The funds are of a legal origin.

Answer: The Government of the Marshall Islands has enacted Public Law 2000-20 which is an *Act to make provision for the prevention of money laundering, and otherwise enable the unlawful proceeds of serious crime to be identified, traced, frozen, seized or confiscated; and for connected purposes.*

The purpose of the Act is primarily to prevent, repress and to eliminate all kinds of financial aids to terrorism originating out of the Marshall Islands and also anywhere in the world. The Banking Commissioner has ordered all financial institutions to report any suspicious transactions as soon as such transaction is detected. The financial institutions and all other businesses dealing in cash transactions have been following the order. However, to date, there have not been any suspicious transactions reported by the banks and other financial institutions in the Republic of the Marshall Islands.

Sub-paragraph 1 (c)

- Does the mechanism defined under the anti-money-laundering legislation which enable the authorities to freeze financial assets or economic resources also include

the freezing of financial assets of terrorists who are outside the territory of the Marshall Islands?

Answer: Public Law 2000-20, Section 71 (1) states that, *the Commissioner or Attorney General may seize and, in accordance with this Section detain, any currency which is being imported into or exported from the Republic of the Marshall Islands, if: (a) he or she has reasonable grounds for suspecting that it is: (i) property derived from a serious offense; (ii) intended by any person for use in the commission of a serious offense.*

Furthermore, Section 71 (5) states that *no currency detained under this section shall be released where: (b) proceedings are instituted in the Republic of the Marshall Islands or elsewhere against any person for an offense with which the currency connected, unless and until the proceedings relating to the relevant application or the proceedings for the offense have been concluded.*

- It is to be noted here that funds, financial assets and economic resources connected with terrorism that require to be frozen may be of legal origin, not be used as yet for the commission of terrorist acts and not represent the proceeds of any crime. Could funds held by non-residents in the Marshall Islands and suspected of having terrorist links be frozen at the request of another state?

Answer: Section 22 (1) of the Public Law 2002-65 states that, *any law enforcement officer or customs official of the Marshall Islands may seize and, in accordance with this section detain, any funds, that the officer or official has probable cause to believe were derived from or intended for terrorism, including, without limitation, funds being imported into or exported from the Marshall Islands.*

Section 22 (2) also states that, *funds of, or intended for, terrorist organizations shall be frozen, seized, and in accordance with this section detained, where the organization has been designated as a terrorist organization by the United Nations Security Council, or by the Minister pursuant to regulations promulgated pursuant to this act, or where there is probable cause to believe that the entity involved is a terrorist organization.*

Sub-paragraph 1 (d):

- What laws and other practical control and surveillance measures exit to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purpose, particularly the financing of terrorism?

Answer: Section 20 (1) says that, *any person who knowingly, by any means, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part:*

(a) for terrorism;
(b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or
(c) for the benefit of person and entities acting on behalf of or at the direction of any person referred to in subsection 1(b);
commits a crime punishable by a term of not less than 30 years and not more than life imprisonment, or a fine of not more than $100,000,000 or both.

Sub-paragraph 2 (a):

- Effective implementation of sub-paragraph 2 (a) of the Resolution requires States to suppress recruitment of members of terrorist groups either inside or outside the Marshall Islands. Please describe the legal and other measures in place that prohibit the recruitment of terrorists in the territory of the Marshall Islands to terrorist groups operation either inside or outside that territory. It should be noted that it is not always the case that a recruiter actually belongs to a criminal or terrorist organization. There is always the possibility of recruitment to terrorist bodies resulting from deception, such as a representation that the purpose of recruitment is one (eg. Teaching) which is different from its real purpose.

Answer: Section 13 of the Public Law 2002-65 states that, *the Attorney General shall take appropriate measures, in accordance with the Constitution and the laws of the Marshall Islands:*

(1) as may be necessary to establish jurisdiction over and prosecute in the Marshall Islands any crime established by this Act;
(2) to investigate terrorism, and upon receiving information that an alleged offender may be present in the Marshall Islands, take the person into custody and take other appropriate measures so as to ensure the alleged offender's presence for the purpose of prosecution;
(3) to take into custody and extradite any alleged offender who is present in the Marshall Islands, and who is subject to arrest and detention for purposes of extradition pursuant to any law in force in the Marshall Islands;
(4) to provide early warning and furnish any relevant information in the possession of Marshall Islands to those countries which the Attorney General believes would have jurisdiction, where there is reason to believe that a terrorism offense has been or will be committed;
(5) to identify, detect, freeze, seize, and obtain forfeiture of any funds used or allocated for the purpose of committing any terrorism offense as well as the proceeds derived from such offenses...

Sub-paragraph 2 (d):

- What is the competence of the courts in the Marshall Islands to deal with the following kinds of acts:

- An act committed outside of the Marshall Islands by a citizen or by a person who is habitually a resident of the Marshall Islands (whether that person is present or not);

Answer: In the event that a citizen or resident of the Marshall Islands committed an act outside the Republic, Section 15 (1) of Public Law 2002-67 states that, *where a foreign country requests the Attorney General to obtain the issuance of a restraining order against property some or all of which is believed to be located in the RMI, criminal proceedings have begun in the foreign country in respect of a serious offense, and there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's coconspirators is located in the RMI, the Attorney General may apply to the High Court for a restraining order.*

Section 15 (2) further states that, *where the Attorney General makes application to the High Court under subsection (1), the court may make a restraining order in respect of the property, as requested by the Attorney General, in relation to the application and to any restraining order issued as a result, as if the serious offense that is the subject of the order had been committed in the RMI.*

- An act committed outside the Marshall Islands by a foreign national who is currently in the Marshall Islands.

Answer: A request to the RMI by a foreign country for international assistance must be made in writing to the Attorney General or a person authorized by the Attorney General to receive requests by foreign countries. However, the Attorney General must make application to the High Court of the Marshall Islands to accommodate the requests received from foreign countries whether these may be restraining orders or otherwise requests for enforcement of foreign confiscation orders. Furthermore, Section 14 (3) of the Public Law 2002-65 states that, *for the purpose of extradition, a terrorism offense shall be treated, as if it had been committed not only in the place in which it occurred but also in the territory of any country Party to an international terrorism convention that is required to establish jurisdiction over the offense in accordance with that convention.*

Sub-paragraph 3 (c)

- Please provide a list of the countries with which the Marshall Islands have concluded bilateral treaties and multilateral arrangements relating to terrorism.

Answer: RMI is party to all the 12 international conventions on terrorism: (1) The International Convention on Offences and Certain Other Acts Committed on Board Aircraft (2) The Convention for the Suppression of Unlawful Seizure of Aircraft (3) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (4) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (5) The Protocol for the Suppression of Unlawful Acts of Violence at

Airports Serving International Civil Aviation (6) The Protocol for the Suppression of Unlawful Acts against the Safety if Fixed Platforms located on the Continental Shelf (7) The International Convention for the Suppression of the Financing of Terrorism (8) The International Convention for the Suppression of Terrorist Bombings (9) The Convention on the Marking of Plastic Explosives for the Purpose of Detection (10) The Convention on the Physical Protection of Nuclear Weapons (11) The International Convention against the Taking of Hostages and (12) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Domestic Agents.

In June 2002, the Marshall Islands DFIU, after being sponsored by the United States, was granted full membership in the Egmont Group. Membership in the Egmont Group is highly valued by the Marshall Islands because it enables the DFIU to develop communications with other financial intelligence units (FIUs). During that same period, the Marshall Islands also became a member of the Asia/Pacific Group on Money Laundering. The Marshall Islands looks forward to using the Asia/Pacific Group to develop and strengthen its ties with the other member states in the region.

On 6 January 2003, a letter of agreement on combatting money laundering between the Government of the United States of America (USG) and the Government of the Republic of the Marshall Islands (GRMI) was signed. This project is designed to establish GRMI capability to (a) to detect and deter money laundering, (b) strengthen the operation of the Domestic Financial Intelligence Unit, (c) protect the confidentiality of the data disclosed to the Domestic Financial Intelligence Unit and (d) share financial intelligence with international administrative authorities. Actions to be taken include the purchase and installation of computer equipments that will be used for storage and analysis of financial disclosures from RMI's financial industry

Sub-paragraph 3 (d)

- The CTC would appreciate an outline of the legislation which has been enacted to implement the Resolution and a progress report on the 6 Counter-terrorism Conventions and Protocols which were approved for ratification by the Parliament of the Marshall Islands in January 2002.

Answer: The following legislation has been enacted in 2002 by the Parliament of the Republic of the Marshall Islands:

- The Counter-Terrorism Act
- The Proceed of Crimes Act
- Amendments to the Banking Act; re Money Laundering
- Foreign Evidence Act
- Mutual Assistance in Criminal Matters Act
- The Transnational Extradition and Transfer of Convicted Persons Act

The Government of the Marshall Islands has implemented enforcement measures relating to these laws immediately upon the effective dates.

Paragraph 4:

- Have the Marshall Islands addressed any of the concerns expressed in paragraph 4 of the Resolution?

Answer: The Marshall Islands has enacted laws against terrorism of all kind and also established mechanisms that would counter terrorist acts all over its territory. These include legislation covering banking, money laundering, importation and exportation of weapons of mass destruction including small arms and light weapons, etc.

Other matters:

- Could the Marshall Islands please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the law, regulations and other documents that are seen as contributing to compliance with the Resolution.

Answer: Please see exhibit A-1.

Exhibit A-1

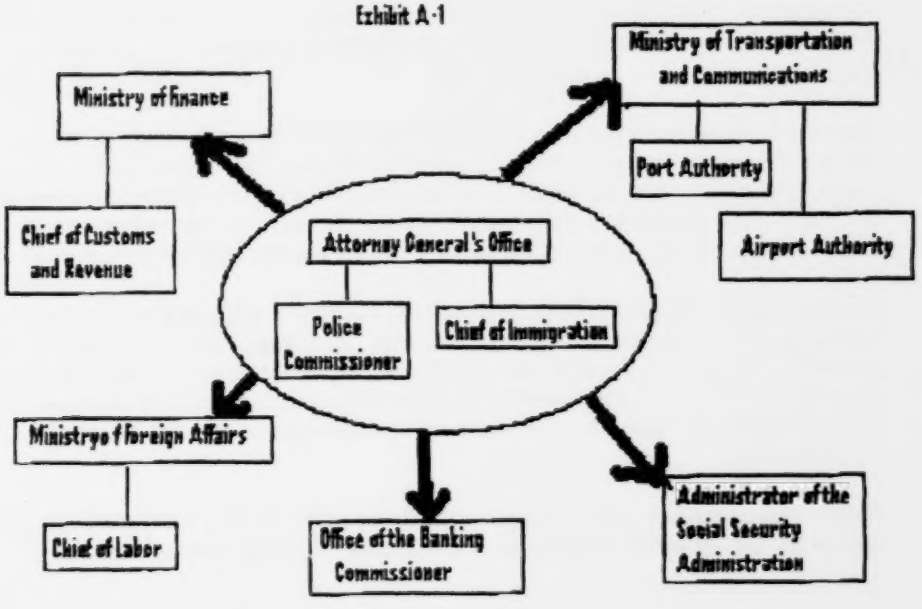

EXHIBIT A-i

Banking Commissioner – statutory responsibilities include establishment of banking policies in which every financial institutions license to do banking in the Republic must follow. Failure to comply with the bank policies promulgated by the Banking Commissioner will result in either suspension or revocation of business license otherwise will be ordered to pay heavy fines and/or serving imprisonment sentences for a specified period of time. The Commissioner reports to the Attorney General who gives orders to the Commissioner to either confiscate all assets and funds under suspicious individuals and organizations that are associated with terrorist organizations around the world.

Director of Port Authority – responsible for ensuring vessels, which are suspicious of carrying weapons and other equipments to be used to promote terrorism in the world, that are seeking permission to pass through the main port of entry in the Republic shall not be allowed to enter its territorial waters.

Chief of Custom and Revenue – statutory responsibilities include ensuring that individuals, associations and other licensed organizations operate legitimate businesses pursuant to the laws of the country and that taxes are paid accordingly. The Chief reports all criminal complaints to the Attorney General for prosecution.

Police Commissioner – statutory responsibilities include being in charge of the National Police Force. The Police Commissioner reports to the Attorney General. The Commissioner and every individual officer on the force have the power to arrest anybody on the spot based on a reasonable belief that the person is suspected of having committed a crime.

Director of Airport Authority – responsibilities include being in charge of the operation and security of the Amata International Airport in Majuro. The director authorizes landing and taking off of all international and domestic aircrafts entering the airspace and territories of the Republic of the Marshall Islands. However, the director reports all suspicious terrorist and non-terrorist aircrafts to the Attorney General for prosecution.

Chief of Labor – responsibilities include screening and investigating applications for employment in the Republic by foreign nationals. The Chief is also responsible for controlling the inflow of nonresident workers and dependants in the country. Protection and preservation of jobs for resident workers is the primary objective of the Chief of Labor division. All suspicious applicants are reported right away to the Attorney General for prosecution.

Chief of Immigration – the primary responsibility of the Chief of Immigration is to control the movement of immigration and migration of foreign nationals including

residents and citizens of the Republic. The Chief has the statutory power to deport and to reject any entry applications by foreign nationals to the country. The Chief of Immigration reports all suspicious violators of the immigration rules and regulations to the Attorney General for prosecution. The Immigration Chief and every one of the Immigration Officers have to the power to arrest on the spot any person based on the reasonable belief that the person is suspected of having committed a crime.

Administrator of Social Security Administration – The administrator is responsible for the management of the retirement benefits for future retirees. It is the duty of the administrator to ensure eligibility to enroll in the Social Security Administration system is authorized by the agencies responsible, such as the Labor Division and the Immigration Division. Any non-resident applicant prior to joining the system must secure authorized employment. The Administrator reports any suspicious persons to the Attorney General for prosecution.